

(1) Where competent medical evidence established that the miner's death was due to pneumoconiosis, or

(2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis, or

(3) Where the presumption set forth at § 718.304 is applicable.

(4) However, survivors are not eligible for benefits where the miner's death was caused by a traumatic injury or the principal cause of death was a medical condition not related to pneumoconiosis, unless the evidence establishes that pneumoconiosis was a substantially contributing cause of death.

(d) To minimize the hardships to potentially entitled survivors due to the disruption of benefits upon the miner's death, survivors' claims filed on or after January 1, 1982, shall be adjudicated on an expedited basis in accordance with the following procedures. The initial burden is upon the claimant, with the assistance of the district director, to develop evidence which meets the requirements of paragraph (c) of this section. Where the initial medical evidence appears to establish that death was due to pneumoconiosis, the survivor will receive benefits unless the weight of the evidence as subsequently developed by the Department or the responsible operator establishes that the miner's death was not due to pneumoconiosis as defined above. However, no such benefits shall be found payable before the party responsible for the payment of such benefits shall have had a reasonable opportunity for the development of rebuttal evidence. See §§ 725.412-725.415 concerning the operator's opportunity to develop evidence prior to an initial determination and §§ 718.307 and 718.403 on the burden of proof.

[45 FR 13678, Feb. 29, 1980, as amended at 48 FR 24288, May 31, 1983]

**§ 718.206 Effect of findings by persons or agencies.**

Decisions, statements, reports, opinions, or the like, of agencies, organizations, physicians or other individuals, about the existence, cause, and extent of a miner's disability, or the cause of a miner's death, are admissible. If

properly submitted, such evidence shall be considered and given the weight to which it is entitled as evidence under all the facts before the adjudication of officer in the claim.

**Subpart D—Presumptions Applicable to Eligibility Determinations**

**§ 718.301 Establishing length of employment as a miner.**

(a) The presumptions set forth in §§ 718.302, 718.303, 718.305 and 718.306 apply only if a miner has been employed in one or more coal mines for specified periods. Regular employment may be established on the basis of any evidence presented, including the testimony of a claimant or other witnesses, and shall not be contingent upon a finding of a specific number of days of employment within a given period.

(b) For the purposes of the presumptions described in this subpart, a year of employment means a period of one year, or partial periods totalling one year, during which the miner was regularly employed in or around a coal mine by the operator or other employer. A "working day" means any day or part of a day for which a miner received pay for work as a miner. If an operator or other employer proves that the miner was not employed in or around a coal mine for a period of at least 125 working days during a year, such operator or other employer shall be determined to have established that the miner was not regularly employed for a year for the purposes of this section. If a miner worked in or around one or more coal mines for fewer than 125 days in a calendar year, he or she shall be credited with a fractional year based on the ratio of the actual number of days worked to 125. No periods of coal mine employment occurring outside the United States shall be credited toward the use of any presumption contained in this part.

**§ 718.302 Relationship of pneumoconiosis to coal mine employment.**

If a miner who is suffering or suffered from pneumoconiosis was employed for ten years or more in one or more coal mines, there shall be a rebuttable presumption that the pneumoconiosis